

19 NOVEMBER 1946

I N D E X
Of
WITNESSES

<u>Prosecution's Witnesses</u>	<u>Page</u>
Ballantine, Joseph W. (resumed)	10809
Direct by Mr. Keenan (continued)	10809
Cross by Mr. Blakeney	10850

I N D E X
Of
EXHIBITS

<u>Doc.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
2215	1245-H		Exhibit "K" of Affidavit of Joseph W. Ballantine		10811
2215	1245-I		Exhibit "L" from above affidavit		10815
2215	1245-J		Exhibit "M" from above affidavit		10825
2215	1245-K		Exhibit "N" from above affidavit		10830

1 Tuesday, 19 November, 1946

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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12
13 Appearances:

14 For the Tribunal, same as before with the
15 exception of the HONORABLE R. B. PAL, Member from
16 India, not sitting.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

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22 (English to Japanese and Japanese
23 to English interpretation was made by the
24 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA, who is represented by his counsel. That
5 will be taken to be the case at all future sessions
6 of this Court until I announce otherwise

7 Mr. Chief of Counsel.

8 - - - -

9 JOSEPH W. BALLANTINE, called as a
10 witness on behalf of the prosecution, resumed
11 the stand and testified as follows:

12 DIRECT EXAMINATION (Continued)

13 MR. KEENAN: Mr. Ballantine, will you proceed
14 with your testimony.

15 THE WITNESS: "The Japanese, soon after
16 receiving this Government's memorandum of October 2,
17 redoubled their emphasis upon the need of haste in
18 reaching an agreement. They offered new formulas for
19 dealing with limited and specific problems, and they
20 stated that Japan had now placed all of its cards on
21 the table and they had gone as far as they could in
22 the direction of making so-called 'concessions.' In
23 their new formulas, there was not discernible any
24 evidence that the Japanese Government was moving even
25 one step toward committing itself to courses of peace

BALLANTINE

DIRECT

1 and that it contemplated receding even one step from
2 insistence upon full attainment of its declared
3 objectives -- which were, in effect, political, economic,
4 and cultural domination of the entire western Pacific
5 area and China. After the new Japanese Cabinet, headed
6 by General TOJO, came into office on October 17, the
7 Japanese became even more insistent in urging upon
8 this Government a quick decision on the Japanese
9 Government's proposals, but, while pressing this
10 Government for a decision, the Japanese Government
11 showed no willingness to effect any fundamental
12 modification of the Japanese position and no desire
13 to apply practically in actual situations the basic
14 principles of justice and equity essential to the
15 building of a lasting peace in the Pacific.

16 "Although throughout the conversations with
17 the Japanese representative, the Secretary of State
18 repeatedly made it clear that the American Government
19 would consult with the Governments of the United
20 Kingdom, Australia, China and the Netherlands before
21 entering into actual negotiations with the Japanese
22 Government affecting the interests of those governments,
23 at no time did the Secretary of State make any statement
24 to Japanese representative which would have warranted
25 the Japanese in assuming that in the informal conversations

BALLANTINE

DIRECT

1 the Secretary of State was delegated to speak or act
2 for the other powers mentioned.

3 "On November 15, Mr. Saburo KURUSU, whom the
4 Japanese Government had decided to send to assist
5 the Japanese Ambassador in the conversations, reached
6 Washington. Shortly thereafter, on November 20,
7 the Japanese Ambassador and Mr. KURUSU presented to
8 the Secretary of State a proposal which, on its face,
9 was extreme. A copy of that proposal is annexed as
10 exhibit K."

11 MR. KEENAN: And with the permission of the
12 Court we offer it in evidence.

13 THE PRESIDENT: Admitted.

14 CLERK OF THE COURT: Prosecution's document
15 No. 2215-K will receive exhibit No. 1245-H.

16 (Whereupon, the document above
17 referred to was marked prosecution's exhibit
18 No. 1245-H and received in evidence.)

19 MR. KEENAN: With the permission of the Court
20 the prosecution would read this exhibit.

21 THE PRESIDENT: Read it, Mr. Chief Prosecutor.

22 MR. KEENAN: (Reading)

23 "Draft Proposal Handed by the Japanese
24 Ambassador (HOLURA) to the Secretary of State on
25 November 20, 1941."

BALLANTINE

DIRECT

1 "1. Both the Governments of Japan and the
2 United States undertake not to make any armed advance-
3 ment into any of the regions in the Southeastern Asia
4 and the Southern Pacific area excepting the part of
5 French Indo-China where the Japanese troops are
6 stationed at present.

7 "2. The Japanese Government undertakes to
8 withdraw its troops now stationed in French Indo-
9 China upon either the restoration of peace between
10 Japan and China or the establishment of an equitable
11 peace in the Pacific area.

12 "In the meantime the Government of Japan
13 declares that it is prepared to remove its troops now
14 stationed in the southern part of French Indo-China
15 to the northern part of the said territory upon the
16 conclusion of the present arrangement which shall later
17 be embodied in the final agreement.

18 "3. The Government of Japan and the United
19 States shall cooperate with a view to securing the
20 acquisition of those goods and commodities which the
21 two countries need in Netherlands East Indies.

22 "4. The Governments of Japan and the United
23 States mutually undertake to restore their commercial
24 relations to those prevailing prior to the freezing of
25 the assets."

1 "The Government of the United States shall
2 supply Japan a required quantity of oil.

3 "5. The Government of the United States
4 undertakes to refrain from such measures and actions
5 as will be prejudicial to the endeavors for the
6 restoration of general peace between Japan and China."
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1 THE WITNESS: (Reading) "Before and after
2 presenting that proposal, Ambassador NOMURA and
3 Mr. KURUSU talked emphatically about the urgency of
4 the situation and intimated vigorously that this was
5 Japan's last word and if an agreement along those
6 lines was not quickly concluded ensuing developments
7 might be most unfortunate.

8 "Acceptance by the American Government of the
9 Japanese proposal of November 20 would have meant con-
10 donement by the United States of Japan's past aggressions,
11 assent by the United States to unlimited courses of
12 conquest by Japan in the future, abandonment by the
13 United States of its whole past position in regard to
14 the most essential principles of its foreign policy in
15 general, betrayal by the United States of China, and
16 acceptance by the United States of a position as a
17 silent partner aiding and abetting Japan in her effort
18 to create a Japanese hegemony in and over the western
19 Pacific and eastern Asia; it would have destroyed the
20 chances of asserting and maintaining American rights
21 and interests in the Pacific; and in its final analysis
22 would have meant a most serious threat to American
23 national security. Japan also clung to her vantage
24 point in Indo-China which threatened the security of
25 the countries to the south and menaced vital trade

BALLANTINE

DIRECT

1 routes. Their conditional offer to withdraw troops
2 from southern Indo-China to northern Indo-China was
3 meaningless as they could have brought those troops
4 back to southern Indo-China within a day or two, and
5 furthermore they placed no limit on the number of troops
6 they might continue to send there.

7 "On November 26, the Secretary of State made
8 a reply to the Japanese representatives in the form of
9 two documents, the first, an outline in a tentative
10 form of a proposed basis for agreement between the
11 United States and Japan, and the second, an explanatory
12 statement in regard to it. A copy of that document is
13 annexed as Exhibit L."

14 MR. KEENAN: Prosecution offers said exhibit
15 in evidence.

16 THE PRESIDENT: Admitted.

17 CLERK OF THE COURT: Prosecution's document
18 No. 2215-L will receive exhibit No. 1245-I.

19 (Whereupon, the document above
20 referred to was marked prosecution's exhibit
21 No. 1245-L, and was received in evidence.)

22 MR. KEENAN: (Reading)

23 "Washington, November 26, 1941.

24 "The representatives of the Government of the
25 United States and of the Government of Japan have been

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DIRECT

1 carrying on during the past several months informal and
2 exploratory conversations for the purpose of arriving
3 at a settlement if possible of questions relating to
4 the entire Pacific area based upon the principles of
5 peace, law and order and fair dealing among nations.
6 These principles include the principle of inviolabil-
7 ity of territorial integrity and sovereignty of each
8 and all nations: the principle of non-interference in
9 the internal affairs of other countries; the principle
10 of equality, including equality of commercial opportu-
11 nity and treatment; and the principle of reliance upon
12 international cooperation and conciliation for the pre-
13 vention and pacific settlement of controversies and for
14 improvement of international conditions by peaceful
15 methods and processes.

16 "It is believed that in our discussions some
17 progress has been made in reference to the general
18 principles which constitute the basis of a peaceful
19 settlement covering the entire Pacific area. Recently
20 the Japanese Ambassador has stated that the Japanese
21 Government is desirous of continuing the conversations
22 directed toward a comprehensive and peaceful settlement
23 in the Pacific area; that it would be helpful toward
24 creating an atmosphere favorable to the successful out-
25 come of the conversations if a temporary modus vivendi

BALLANTINE

DIRECT

1 could be agreed upon to be in effect while the conver-
2 sations looking to a peaceful settlement in the Pacific
3 were continuing. On November 20 the Japanese Ambassador
4 communicated to the Secretary of State proposals in re-
5 gard to temporary measures to be taken respectively by
6 the Government of Japan and by the Government of the
7 United States, which measures are understood to have
8 been designed to accomplish the purposes above indicated.

9 "The Government of the United States most
10 earnestly desires to contribute to the promotion and
11 maintenance of peace and stability in the Pacific area,
12 and to afford every opportunity for the continuance of
13 discussions with the Japanese Government directed toward
14 working out of a broad-gauge program of peace through-
15 out the Pacific area. The proposals which were pre-
16 sented by the Japanese Ambassador on November 20 con-
17 tain some features which, in the opinion of this Govern-
18 ment, conflict with the fundamental principles which
19 form a part of the general settlement under considera-
20 tion and to which each Government has declared that
21 it is committed. The Government of the United States
22 believes that the adoption of such proposals would
23 not be likely to contribute to the ultimate objectives
24 of ensuring peace under law, order and justice in the
25 Pacific area, and it suggests that further effort be

BALLANTINE

DIRECT

1 made to resolve our divergences of views in regard
2 to the practical application of the fundamental prin-
3 ciples already mentioned.

4 "With this object in view the Government of
5 the United States offers for the consideration of
6 the Japanese Government a plan of a broad but simple
7 settlement covering the entire Pacific area as one
8 practical exemplification of a program which this
9 Government envisages as something to be worked out
10 during our further conversations.

11 "The plan therein suggested represents an ef-
12 fort to bridge the gap between our draft of June 21,
13 1941 and the Japanese draft of September 25 by making
14 a new approach to the essential problems underlying a
15 comprehensive Pacific settlement. This plan contains
16 provisions dealing with the practical application of
17 the fundamental principles which we have agreed in
18 our conversations constitute the only sound basis for
19 worthwhile international relations. We hope that in
20 this way progress toward reaching a meeting of minds
21 between our two Governments may be expedited."

22 "Document Handed by the Secretary of State to the
23 Japanese Ambassador (NOHURA) on November 26, 1941.

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1 "Strictly Confidential

2 Tentative and Without

3 Commitment.

"Washington, November 26, 1941

4 "Outline of Proposed Basis for Agreement Between the
5 United States and Japan

6 "Section I

7 "Draft Mutual Declaration Policy

8 "The Government of the United States and the
9 Government of Japan both being solicitous for the peace
10 of the Pacific affirm that their national policies are
11 directed toward lasting and extensive peace throughout
12 the Pacific area, that they have no territorial designs
13 in that area, that they have no intention of threaten-
14 ing other countries or of using military force aggres-
15 sively against any neighboring nation, and that, accord-
16 ingly, in the national policies they will actively
17 support and give practical application to the follow-
18 ing fundamental principles upon which their relations
19 with each other and with all other governments are
20 based.

21 "(1) The principle of inviolability of terri-
22 torial integrity and sovereignty of each and all nations.

23 "(2) The principle of non-interference in
24 the internal affairs of other countries.

25 "(3) The principle of equality, including

BALLANTINE

DIRECT

equality of commercial opportunity and treatment.

"(4) The principle of reliance upon international cooperation and conciliation for the prevention and pacific settlement of controversies and for improvement of international conditions by peaceful methods and processes.

"The Government of Japan and the Government of the United States have agreed that toward eliminating chronic political instability, preventing recurrent economic collapse, and providing a basis for peace, they will actively support and practically apply the following principles in their economic relations with each other and with other nations and peoples:

"(1) The principle of non-discriminating in international commercial relations.

"(2) The principle of international economic cooperation and abolition of extreme nationalism as expressed in excessive trade restrictions.

"(3) The principle of non-discriminatory access by all nations to raw material supplies.

"(4) The principle of full protection of the interests of consuming countries and populations as regards the operation of international commodity agreements."

BALLANTINE

DIRECT

1 "(5) The principle of establishment of such
2 institutions and arrangements of international finance
3 as may lend aid to the essential enterprises and the
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1 continuous development of all countries and may permit
2 payments through processes of trade consonant with the
3 welfare of all countries.

4 "Section II

5 "Steps To Be Taken By the Government of the United
6 States and by the Government of Japan.

7 "The Government of the United States and the
8 Government of Japan propose to take steps as follows:

9 "1. The Government of the United States and
10 the Government of Japan will endeavor to conclude a
11 multilateral non-aggression pact among the British
12 Empire, China, Japan, the Netherlands, the Soviet Union,
13 Thailand and the United States.

14 "2. Both Governments will endeavor to con-
15 clude among the American, British, Chinese, Japanese,
16 the Netherland and Thai Governments an agreement where-
17 under each of the Governments would pledge itself to
18 respect the territorial integrity of French Indo-China
19 and, in the event that there should develop a threat
20 to the territorial integrity of Indo-China, to enter
21 into immediate consultation, with a view to taking
22 such measures as may be deemed necessary and advisable
23 to meet the threat in question. Such agreement would
24 provide also that each of the Governments party to the
25 agreement would not seek or accept preferential treat-

BALLANTINE

DIRECT

1 ment in its trade or economic relations with Indo-
2 China and would use its influence to obtain for each
3 of the signatories equality of treatment in trade
4 and commerce with French Indo-China.

5 "3. The Government of Japan will withdraw
6 all military, naval, air and police forces from China
7 and from Indo-China.

8 "4. The Government of the United States
9 and the Government of Japan will not support--militar-
10 ily, politically, economically--any government or regime
11 in China other than the National Government of the
12 Republic of China with capital temporarily at Chung-
13 king.

14 "5. Both Governments will give up all extra-
15 territorial rights in China, including rights and
16 interests in and with regard to international settle-
17 ments and concessions, and rights under the Boxer
18 Protocol of 1901.

19 "Both Governments will endeavor to obtain
20 the agreement of the British and other governments
21 to give up extra territorial rights in China, including
22 rights in international settlements and in concessions
23 and under the Boxer Protocol of 1901.

24 "6. The Government of the United States and
25 the Government of Japan will enter into negotiations

BALLANTINE

DIRECT

1 for the conclusion between the United States and
2 Japan of a trade agreement, based upon reciprocal
3 most-favored-nation treatment and reduction of trade
4 barriers by both countries, including an undertaking
5 by the United States to bind raw silk on the free
6 list.

7 "7. The Government of the United States and
8 the Government of Japan will, respectively, remove
9 the freezing restrictions on Japanese funds in the
10 United States and on American funds in Japan.

11 "8. Both Governments will agree upon a plan
12 for the stabilization of the dollar-yen rate, with the
13 allocation of funds adequate for this purpose, half to
14 be supplied by Japan and half by the United States.

15 "9. Both Governments will agree that no
16 agreement which either has concluded with any third
17 power or powers shall be interpreted by it in such a
18 way as to conflict with the fundamental purpose of
19 this agreement, the establishment and preservation of
20 peace throughout the Pacific area.

21 "10. Both Governments will use their influence
22 to cause other governments to adhere to and to give
23 practical application to the basic political and eco-
24 nomic principles set forth in this agreement."
25

BALLANTINE

DIRECT

1 THE WITNESS: (Reading) "Although, it
2 subsequently appeared, the Japanese treated the
3 November 26 proposal as finally disposing of the ques-
4 tion of negotiating a peaceful settlement covering the
5 Pacific area, they kept up the appearance of continuing
6 negotiations right down to December 7.

7 "On December 2, the President directed that
8 inquiry be made at once of the Japanese Ambassador and
9 Mr. KURUSU in regard to the reasons for continued
10 Japanese troop movements into Indo-China. On December 5,
11 the Japanese Ambassador called and presented to the
12 Under Secretary of State, Mr. Welles, a reply to the
13 President's inquiry of December 2 containing the
14 specious statement that Japanese reinforcements had
15 been sent to Indo-China as a precautionary measure
16 against Chinese troops in bordering Chinese territory.
17 On December 6, President Roosevelt telegraphed a per-
18 sonal appeal to the Emperor of Japan that the 'tragic
19 possibilities' in the situation be avoided. At the
20 President's express direction the message was sent in
21 the 'gray' code, a non-confidential code which the
22 Japanese would have no difficulty in deciphering. In
23 order to assure prompt decoding and delivery by
24 Ambassador Grew of that message, a brief telegram was
25 sent him shortly in advance to be ready for a message

BALLANTINE

DIRECT

1 to the Emperor which was being put on the wires. The
2 alerting message was dispatched on December 6 at 8 p.m.;
3 the message to the Emperor at 9 p.m. There is annexed
4 as Exhibit M a copy of the message to the Emperor."

5 MR. KEENAN: The exhibit is tendered in
6 evidence.

7 THE PRESIDENT: Admitted.

8 CLERK OF THE COURT: Prosecution's document
9 No. 2215-M will receive exhibit No. 1245-J.

10 (Whereupon, the document above
11 referred to was marked prosecution's exhibit
12 No. 2215-M, and was received in evidence.)

13 MR. HIGGINS: I will read prosecution's
14 exhibit No. 1245-J.

15 "'President Roosevelt to Emperor Hirohito
16 of Japan'

17 "'(Washington), December 6, 1941

18 "'Almost a century ago the President of
19 the United States addressed to the Emperor of Japan
20 a message extending an offer of friendship of the
21 people of the United States to the people of Japan.
22 That offer was accepted, and in the long period of
23 unbroken peace and friendship which has followed,
24 our respective nations, through the virtues of
25 their peoples and the wisdom of their rulers have

1 prospered and have substantially helped humanity.

2 "Only in situations of extraordinary
3 importance to our two countries need I address to
4 Your Majesty messages on matters of state. I feel I
5 should now so address you because of the deep and
6 far-reaching emergency which appears to be in formation.

7 "Developments are occurring in the Pacific
8 area which threaten to deprive each of our nations
9 and all humanity of the beneficial influence of
10 the long peace between our two countries. Those
11 developments contain tragic possibilities.

12 "The people of the United States, believing
13 in peace and in the right of nations to live and let
14 live, have eagerly watched the conversations between
15 our two Governments during these past months. We
16 have hoped for a termination of the present conflict
17 between Japan and China. We have hoped that a peace
18 of the Pacific could be consummated in such a way
19 that nationalities of many diverse peoples could
20 exist side by side without fear of invasion; that
21 unbearable burdens of armaments could be lifted
22 for them all; and that all peoples would resume
23 commerce without discrimination against or in favor
24 of any nation.
25

"I am certain that it will be clear to

1 Your Majesty, as it is to me, that in seeking these
2 great objectives both Japan and the United States
3 should agree to eliminate any form of military threat.
4 This seemed essential to the attainment of the high
5 objectives.

6 "More than a year ago Your Majesty's
7 Government concluded an agreement with the Vichy
8 Government by which five or six thousand Japanese
9 troops were permitted to enter into Northern French
10 Indo-China for the protection of Japanese troops
11 which were operating against China further north.
12 And this Spring and Summer the Vichy Government
13 permitted further Japanese military forces to enter
14 into Southern French Indo-China for the common
15 defense of French Indo-China. I think I am correct
16 in saying that no attack has been made upon Indo-
17 China, nor that any has been contemplated.

18 "During the past few weeks it has become
19 clear to the world that Japanese military, naval
20 and air forces have been sent to Southern Indo-
21 China in such large numbers as to create a reasonable
22 doubt on the part of other nations that this contin-
23 uing concentration in Indo-China is not defensive
24 in its character.

25 "Because these continuing concentrations

1 in Indo-China have reached such large proportions
2 and because they extend now to the southeast and
3 the southwest corners of that Peninsula, it is only
4 reasonable that the people of the Philippines, of
5 the hundreds of Islands of the East Indies, of Malaya
6 and of Thailand itself are asking themselves whether
7 these forces of Japan are preparing or intending
8 to make attack in one or more of these many directions.

9 "I am sure that Your Majesty will under-
10 stand that the fear of all these peoples is a legiti-
11 mate fear in as much as it involves their peace
12 and their national existence. I am sure that Your
13 Majesty will understand why the people of the United
14 States in such large numbers look askance at the
15 establishment of military, naval and air bases
16 manned and equipped so greatly as to constitute
17 armed forces capable of measures of offense.

18 "It is clear that a continuance of such
19 a situation is unthinkable.

20 "None of the peoples whom I have spoken
21 of above can sit either indefinitely or permanently
22 on a keg of dynamite.

23 "There is absolutely no thought on the
24 part of the United States of invading Indo-China
25 if every Japanese soldier or sailor were to be

withdrawn therefrom.

"I think that we can obtain the same assurance from the Governments of the East Indies, the Governments of Malaya and the Government of Thailand. I would even undertake to ask for the same assurance on the part of the Government of China. Thus a withdrawal of the Japanese forces from Indo-China would result in the assurance of peace throughout the whole of the South Pacific area.

"I address myself to Your Majesty at this moment in the fervent hope that Your Majesty may, as I am doing, give thought in this definite emergency to ways of dispelling the dark clouds. I am confident that both of us, for the sake of the peoples not only of our own great countries but for the sake of humanity in neighboring territories, have a sacred duty to restore traditional amity and prevent further death and destruction in the world.

"FRANKLIN D. ROOSEVELT

"(Foreign Relations, Vol. II, p. 784-786)"

BALLANTINE

DIRECT

1 THE WITNESS: (Reading) "The press was
2 informed by the White House at about 7.40 p.m. on
3 December 6 of the fact that a message to the Emperor
4 was being dispatched.

5 "On Sunday, December 7, at about 12 o'clock
6 noon, the Secretary of State, in response to a telephone
7 request from the Japanese Ambassador, made an appoint-
8 ment to receive the Ambassador and Mr. KURUSU at 1 p.m.
9 Shortly after 1 p.m., the Ambassador and Mr. KURUSU asked
10 by telephone that the appointment be postponed until
11 1.45 p.m. They arrived at the Department of State at
12 2.05 p.m. and were received by the Secretary at 2.20 p.m.
13 The Japanese Ambassador said that he had been instructed
14 by his Government to deliver a paper at 1 p.m., but
15 that difficulty in decoding the message had delayed
16 him. He then handed the Secretary a document, a copy
17 of which is annexed as Exhibit N."

18 MR. KEENAN: Exhibit N is tendered to the
19 Tribunal in evidence.

20 THE PRESIDENT: Admitted.

21 CLERK OF THE COURT: Prosecution's document
22 No. 2215-N will receive exhibit No. 1245-K.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhibit
25 No. 1245-K, and was received in evidence.)

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1 MR. HIGGINS: I read Prosecution exhibit
2 No. 1245-K.

3 "Memorandum Handed by the Japanese Am-
4 bassador (NOMURA) to the Secretary of State at 2.20
5 P. M. on December 7, 1941.

6 "1. The Government of Japan, prompted by
7 a genuine desire to come to an amicable understand-
8 ing with the Government of the United States in order
9 that the two countries by their joint efforts may
10 secure the peace of the Pacific Area and thereby
11 contribute toward the realization of world peace, has
12 continued negotiations with the utmost sincerity
13 since April last with the Government of the United
14 States regarding the adjustment and advancement of
15 Japanese-American relations and the stabilization
16 of the Pacific Area.

17 "The Japanese Government has the honor
18 to state frankly its views concerning the claims
19 the American Government has persistently maintained
20 as well as the measures the United States and Great
21 Britain have taken toward Japan during these eight
22 months.

23 "2. It is the immutable policy of the
24 Japanese Government to insure the stability of East
25 Asia and to promote world peace and thereby to enable

BALLANTINE

DIRECT

1 all nations to find each its proper place in the
2 world.

3 "Ever since China Affair broke out owing
4 to the failure on the part of China to comprehend
5 Japan's true intentions, the Japanese Government
6 has striven for the restoration of peace and it has
7 consistently exerted its best efforts to prevent the
8 extention of war-like disturbances. It was also
9 to that end that in September last year Japan con-
10 cluded the Tripartite Pact with Germany and Italy.

11 "However, both the United States and
12 Great Britain have resorted to every possible
13 measure to assist the Chungking regime so as to
14 obstruct the establishment of a general peace
15 between Japan and China, interfering with Japan's
16 constructive endeavours toward the stabilization
17 of East Asia. Exerting pressure on the Netherlands
18 East Indies, or menacing French Indo-China, they
19 have attempted to frustrate Japan's aspiration
20 to the ideal of common prosperity in cooperation with
21 these regions. Furthermore, when Japan in accordance
22 with its protocol with France took measures of
23 joint defence of French Indo-China, both American
24 and British Governments, wilfully misinterpreting
25 it as a threat to their own possessions, and

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DIRECT

1 inducing the Netherlands Government to follow suit,
2 they enforced the assets freezing order,,thus
3 severing economic relations with Japan. While
4 manifesting thus an obviously hostile attitude,
5 these countries have strengthened their military
6 preparations perfecting an encirclement of Japan,
7 and have brought about a situation which endangers
8 the very existence of the Empire.

9 "Nevertheless, to facilitate a speedy
10 settlement, the Premier of Japan proposed, in
11 August last, to meet the President of the United
12 States for a discussion of important problems
13 between the two countries covering the entire
14 Pacific area. However, the American Government,
15 while accented in principle the Japanese proposal,
16 insisted that the meeting should take place after
17 an agreement of view had been reached on fundamental
18 and essential questions.

19 "3. Subsequently, on September 25th
20 the Japanese Government submitted a proposal based
21 on the formula proposed by the American Government,
22 taking fully into consideration past American
23 claims and also incorporating Japanese views.
24 Repeated discussions proved of no avail in pro-
25 ducing readily an agreement of view. The present

BALIANTINE

DIRECT

1 cabinet, therefore, submitted a revised proposal,
2 moderating still further the Japanese claims re-
3 garding the principal points of difficulty in the
4 negotiation and endeavored strenuously to reach
5 a settlement. But, the American Government, ad-
6 hering steadfastly to its original assertions,
7 failed to display in the slightest degree a spirit
8 of conciliation. The negotiation made no progress.

9 "Therefore, the Japanese Government,
10 with a view to doing its utmost for averting a
11 crisis in Japanese-American relations, submitted
12 on November 20th still another proposal in order
13 to arrive at an equitable solution of the more
14 essential and urgent questions which, simplifying
15 its previous proposal, stipulated the following
16 points:

17 "(1) The Governments of Japan and the
18 United States undertake not to dispatch armed
19 forces into any of the regions, excepting French
20 Indo-China, in the Southeastern Asia and the
21 Southern Pacific area.

22 "(2) Both Governments shall cooperate
23 with the view to securing the acquisition in the
24 Netherlands East Indies of those goods and com-
25 modities of which the two countries are in need."

BALLANTINE

DIRECT

1 "(3) Both Governments mutually under-
2 take to restore commercial relations to those pre-
3 vailing prior to the freezing of assets.

4 "The Government of the United States shall
5 supply Japan the required quantity of oil.

6 "(4) The Government of the United States
7 undertakes not to resort to measures and actions
8 prejudicial to the endeavours for the restoration
9 of general peace between Japan and China.

10 "(5) The Japanese Government undertakes
11 to withdraw troops now stationed in French Indo-
12 China upon either the restoration of peace between
13 Japan and China or the establishment of an equitable
14 peace in the Pacific Area; and it is prepared to
15 remove the Japanese troops in the southern part
16 of French Indo-China to the northern part upon
17 the conclusion of the present agreement.

18 "As regards China, the Japanese Government,
19 while expressing its readiness to accept the offer
20 of the President of the United States to act as
21 'introducer' of peace between Japan and China as
22 was previously suggested, asked for an undertaking
23 on the part of the United States to do nothing
24 prejudicial to the restoration of Sino-Japanese
25 peace when the two parties have commenced direct

BALLANTINE

DIRECT

1 negotiations.

2 "The American Government not only re-
3 jected the above-mentioned new proposal, but made
4 known its intention to continue its aid to Chiang
5 Kai-shek; and in spite of its suggestion mentioned
6 above, withdrew the offer of the President to act
7 as so-called 'Introducer' of peace between Japan
8 and China, pleading that time was not yet ripe for
9 it. Finally on November 26th, in an attitude to
10 impose upon the Japanese Government those prin-
11 ciples it has persistently maintained, the American
12 Government made a proposal totally ignoring Japanese
13 claims, which is a source of profound regret to the
14 Japanese Government.

15 "4. From the beginning of the present
16 negotiation the Japanese Government has always
17 maintained an attitude of fairness and moderation,
18 and did its best to reach a settlement, for which
19 it made all possible concessions often in spite
20 of great difficulties. As for the China question
21 which constituted an important subject of the
22 negotiation, the Japanese Government showed a most
23 conciliatory attitude. As for the principle of
24 non-discrimination in international commerce,
25 advocated by the American Government, the Japanese

BAILLANTINE

DIRECT

1 Government expressed its desire to see the said
2 principle applied throughout the world, and de-
3 clared that along with the actual practice of this
4 principle in the world, the Japanese Government would
5 endeavour to apply the same in the Pacific Area
6 including China, and made it clear that Japan had
7 no intention of excluding from China economic activ-
8 ities of third powers pursued on an equitable basis.
9 Furthermore, as regards the question of withdrawing
10 troops from French Indo-China, the Japanese Government
11 even volunteered, as mentioned above, to carry out
12 an immediate evacuation of troops from Southern
13 French Indo-China as a measure of easing the sit-
14 uation.

15 "It is presumed that the spirit of con-
16 ciliation exhibited to the utmost degree by the
17 Japanese Government in all these matters is fully
18 appreciated by the American Government.

19 "On the other hand, the American Govern-
20 ment, always holding fast to theories in disregard
21 of realities, and refusing to yield an inch on its
22 impractical principles, caused undue delay in the
23 negotiation. It is difficult to understand this
24 attitude of the American Government and the Japanese
25 Government desires to call the attention of the

BALIANTINE

DIRECT

1 American Government especially to the following
2 points:

3 "1. The American Government advocates
4 in the name of world peace those principles
5 favorable to it and urges upon the Japanese
6 Government the acceptance thereof. The peace
7 of the world may be brought about only by
8 discovering a mutually acceptable formula
9 through recognition of the reality of the
10 situation and mutual appreciation of one
11 another's position. An attitude such as
12 ignores realities and imposes one's selfish
13 views upon others will scarcely serve the
14 purpose of facilitating the consummation of
15 negotiations."

BALLANTINE

DIRECT

1 "Of the various principles put forward by
2 the American Government as a basis of the Japanese-
3 American Agreement, there are some which the Japanese
4 Government is ready to accept in principle, but in
5 view of the world's actual conditions, it seems only
6 a utopian ideal on the part of the American Government
7 to attempt to force their immediate adoption.

8 "Again, the proposal to conclude a multi-
9 lateral non-aggression pact between Japan, United States
10 Great Britain, China, the Soviet Union, the Netherlands
11 and Thailand, which is patterned after the old concept
12 of collective security, is far removed from the reali-
13 ties of East Asia.

14 "'2. The American proposal contained a stipu-
15 lation which states--'Both Governments will agree that
16 no agreement, which either has concluded with any third
17 power or powers, shall be interpreted by it in such a
18 way as to conflict with the fundamental purpose of
19 this agreement, the establishment and preservation of
20 peace throughout the Pacific area'. It is presumed that
21 the above provision has been proposed with a view to
22 restrain Japan from fulfilling its obligations under
23 the Tripartite Pact when the United States participates
24 in the War in Europe, and, as such, it cannot be accepted
25 by the Japanese Government.'"

BAILANTINE

DIRECT

1 "The American Government, obsessed with its
2 own views and opinions, may be said to be scheming
3 for the extension of the war. While it seeks, on the
4 one hand, to secure its rear by stabilizing the Pacific
5 Area, it is engaged, on the other hand, in aiding Great
6 Britain and preparing to attack, in the name of self-
7 defense, Germany and Italy, two Powers that are striv-
8 ing to establish a new order in Europe. Such a policy
9 is totally at variance with the many principles upon
10 which the American Government proposes to found the
11 stability of the Pacific Area through peaceful means.

12 "3. Whereas the American Government, under
13 the principles it rigidly upholds, objects to settle
14 international issues through military pressure, it is
15 exercising in conjunction with Great Britain and other
16 nations pressure by economic power. Recourse to such
17 pressure as a means of dealing with international rela-
18 tions should be condemned as it is at times more in-
19 humane than military pressure.

20 "4. It is impossible not to reach the con-
21 clusion that the American Government desires to main-
22 tain and strengthen, in coalition with Great Britain
23 and other Powers, its dominant position it has hither-
24 to occupied not only in China but in other areas of
25 East Asia. It is a fact of history that the countries

BALLANTINE

DIRECT

1 of East Asia for the past hundred years or more have
2 been compelled to observe the status quo under the
3 Anglo-American policy of imperialistic exploitation
4 and to sacrifice themselves to the prosperity of the
5 two nations. The Japanese Government cannot tolerate
6 the perpetuation of such a situation since it directly
7 runs counter to Japan's fundamental policy to enable
8 all nations to enjoy each its proper place in the
9 world.

10 "The stipulation proposed by the American
11 Government relative to French Indo-China is a good
12 exemplification of the above-mentioned American policy.
13 Thus the six countries, --Japan, the United States, Great
14 Britain, the Netherlands, China and Thailand,-- except-
15 ing France, should undertake among themselves to re-
16 spect the territorial integrity and sovereignty of
17 French Indo-China and equality of treatment in trade
18 and commerce would be tantamount to placing that ter-
19 ritory under the joint guarantee of the Governments
20 of those six countries. Apart from the fact that such
21 a proposal totally ignores the position of France, it
22 is unacceptable to the Japanese Government in that such
23 an arrangement cannot but be considered as an exten-
24 sion to French Indo-China of a system similar to the
25 Nine-Power Treaty structure which is the chief factor

BALLANTINE

DIRECT

1 responsible for the present predicament of East Asia.

2 "15. All the items demanded of Japan by the
3 American Government regarding China such as wholesale
4 evacuation of troops or unconditional application of
5 the principle of non-discrimination in international
6 commerce ignored the actual conditions of China, and
7 are calculated to destroy Japan's position as the
8 stabilizing factor of East Asia. The attitude of the
9 American Government in demanding Japan not to support
10 militarily, politically or economically any regime
11 other than the regime at Chungking, disregarding there-
12 by the existence of the Nanking Government, shatters
13 the very basis of the present negotiation. This de-
14 mand of the American Government falling, as it does,
15 in line with its above-mentioned refusal to cease from
16 aiding the Chungking regime, demonstrates clearly the
17 intention of the American Government to obstruct the
18 restoration of normal relations between Japan and
19 China and the return of peace to East Asia.

20 "15. In brief, the American proposal con-
21 tains certain acceptable items such as those concern-
22 ing commerce, including the conclusion of a trade
23 agreement, mutual removal of the freezing restrictions,
24 and stabilization of yen and dollar exchange,
25 or the abolition of extra-territorial rights in
China. On the other hand,

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DIRECT

1 however, the proposal in question ignores Japan's
2 sacrifices in the four years of the China Affair,
3 menaces the Empire's existence itself and disparages
4 its honour and prestige. Therefore, viewed in its
5 entirety, the Japanese Government regrets that it can-
6 not accept the proposal as a basis of negotiation.

7 "16. The Japanese Government, in its desire
8 for an early conclusion of the negotiation, proposed
9 simultaneously with the conclusion of the Japanese-
10 American negotiation, agreements to be signed with
11 Great Britain and other interested countries. The
12 proposal was accepted by the American Government.
13 However, since the American Government has made the
14 proposal of November 26th as a result of frequent
15 consultation with Great Britain, Australia, the Nether-
16 lands and Chungking, and presumably by catering to the
17 wishes of the Chungking regime in the questions of
18 China, it must be concluded that all these countries
19 are at one with the United States in ignoring Japan's
20 position.

21
22 "17. Obviously it is the intention of the
23 American Government to conspire with Great Britain and
24 other countries to obstruct Japan's efforts toward
25 the establishment of peace through the creation of a
new order in East Asia, and especially to preserve

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DIRECT

1 Anglo-American rights and interests by keeping Japan
2 and China at war. This intention has been revealed
3 clearly during the course of the present negotiation.
4 Thus, the earnest hope of the Japanese Government to
5 adjust Japanese-American relations and to preserve and
6 promote the peace of the Pacific through cooperation
7 with the American Government has finally been lost.

8 "The Japanese Government regrets to have to
9 notify hereby the American Government that in view
10 of the attitude of the American Government it cannot
11 but consider that it is impossible to reach an agree-
12 ment through further negotiations.

13 "'Washington, December 7, 1941.'

14 "(Foreign Relations, Vol. II, p. 787-792.)"
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THE WITNESS (Reading):

"The Japanese message was not a declaration of war with reasons or an ultimatum. It was not even a declaration of intention to sever diplomatic relations.

"The allegations in the Japanese message are contrary to fact. Since the outset of the conversations between the two governments, the effort of the Japanese Government was directed toward inducing the United States to surrender its basic policy, while the Japanese Government maintained intact its policy of aggression and force. The immutable policy of the Japanese Government to ensure the stability of East Asia was predicated upon establishing at the outset a complete Japanese military and economic stranglehold over China, calling for Japanese control over strategic Chinese industries and facilities, referred to euphemistically in terms such as 'economic cooperation with China,' and retention in large areas of China for an indefinite period of large Japanese garrisons to protect Japan's holdings, a stipulation cloaked under the innocent sounding provision 'joint-defense against Communism.' These terms were embodied in the so-called 'treaty' of 1940 between Japan and the puppet Wang Ching-wei regime. The Japanese Government sought to obtain American assent to the imposition of

BALLANTINE

DIRECT

1 these terms on the Chinese Government. At no time
2 did the Japanese Government budge from insistence
3 upon these terms, and for the Japanese Government to
4 speak of making the utmost concessions is a monstrous
5 distortion of the facts. It was because of this
6 intransigent position of the Japanese Government that
7 it would heed no suggestion looking toward an amicable
8 adjustment of its differences with China. The conten-
9 tion that the Japanese Government's proposal of Septem-
10 ber 25 was based upon the American proposal is not sus-
11 tained by a comparison of the two proposals. An analy-
12 sis of the essential characteristic of the Japanese
13 proposal of November 20 has already been presented above.

14 "Refusal on the part of China to come to
15 agreement with Japan of Japan's terms was due not to
16 failure on the part of China to understand Japan's
17 true intentions, as alleged, but to the fact that
18 Japan's true intentions were clearly understood by
19 China. The American policy of assisting the Chinese
20 Government was inspired by a desire to prevent Japan
21 from coercing China with a peace settlement under
22 which China would become completely dominated by Japan.
23 The policy of the United States and its friends, in-
24 cluding the imposition of freezing measures, was one
25 of self-defense against the publicly proclaimed Japa-

BALLANTINE

DIRECT

1 nose policy of general aggression. The offer of the
2 Government of the United States, contained in its
3 proposal of June 21, under which the 'President of
4 the United States will suggest to the Government of
5 China that the Government of China and the Government
6 of Japan enter into a negotiation on a basis mutually
7 advantageous and acceptable for a termination of hos-
8 tilities and resumption of peaceful relations' was of
9 course made contingent upon Japan's entering into a
10 general agreement along the lines of the June 21 pro-
11 posal and was never withdrawn. The American Govern-
12 ment's proposal of November 26 represented a practical
13 application of principles which had been under dis-
14 cussion during months of negotiations, and was nothing
15 new; it offered Japan various benefits which would have
16 been welcomed by any country bent on pursuing peaceful
17 courses. Such delay as occurred in the conversations
18 arose entirely from the firm adherence of the Japanese
19 Government to its fixed policies of aggression. It is
20 not clear what is meant by the Japanese contention that
21 the American proposal for a multilateral non-aggression
22 pact was far removed from the realities of East Asia,
23 unless it was that the proposal conflicted with the
24 Japanese plan for establishing Japanese domination of
25 the entire Western Pacific area. The charge that the

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1 United States was scheming for an extension of the
2 war was, on its face, preposterous. The charge that
3 the United States, in conjunction with Great Britain,
4 was exercising economic pressure in order to deal with
5 international relations refers obviously to the freez-
6 ing measure which was resorted to as a necessary measure
7 of self-defense after Japan had launched its large-
8 scale forward military movement into Southern Indo-
9 China so as to imperil the security of American, Brit-
10 ish and Dutch territory. The charge that the United
11 States desired to maintain and strengthen its alleged
12 dominant position in China is, on its face, absurd as
13 the United States never sought nor did it ever have a
14 dominant position in China or in the Far East. With
15 regard to the contention that the United States sought
16 to obstruct the creation by Japan of a new order in
17 East Asia, it is of course true that the United States
18 was consistently opposed to Japan's pretensions to
19 the arrogation to itself of a position of military
20 dominance throughout the Far East and the western
21 Pacific area.

22
23 "The Secretary of State read the Japanese
24 document, turned to the Japanese Ambassador, and said,
25 'I must say in all my conversations with you /the
Japanese Ambassador/ during the last nine months I

BALLANTINE

DIRECT

1 have never uttered one word of untruth. This is
2 borne out absolutely by the record. In all my fifty
3 years of public service I have never seen a document
4 that was more crowded with infamous falsehoods and
5 distortions--infamous falsehoods and distortions on a
6 scale so huge that I never imagined until today that
7 any government on this planet was capable of uttering
8 them.'

9 "The Ambassador and Mr. KURUSU then took
10 their leave without making any comment.

11 "This interview, as later appeared, took
12 place more than an hour after the Japanese armed forces
13 had struck without warning at Pearl Harbor and over
14 two hours after an actual Japanese landing in Malaya
15 and four hours after they had crossed the boundary of
16 the International Settlement at Shanghai. These facts
17 were not mentioned by NOMURA and KURUSU."

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1 MR. KEENAN: You may cross-examine.

2 MR. WARREN: If the Tribunal please, the
3 Tribunal has already stated that it would not take
4 into consideration any conclusions of the witness.
5 At the conclusion of the testimony of this witness
6 the defense believes that his master affidavit, not
7 the documents which he introduced in support thereof,
8 but his master affidavit in its entirety, not only
9 amounts to a conclusion of the witness, but in addi-
10 tion, to a summation, a summation of the prosecution's
11 viewpoint on this matter, and is not the testimony of
12 the witness. We, therefore, ask that the master affi-
13 davit only, not including the exhibits, be stricken
14 from the record for that reason, so that the defense
15 will not have to contend with it in this cross-examina-
16 tion.

17 THE PRESIDENT: There is much in the affidavit
18 that is admissible, much that is not. We gave our
19 decision yesterday, and we are not going to review it.

20 Major Blakeney.

21 CROSS-EXAMINATION

22 BY MR. BLAKENEY:

23 Q What prepared your affidavit, Mr. Witness?

24 A I prepared it largely myself from the records.

25 Q That is to say, you wrote it yourself?

BALLANTINE

CROSS

1 A Largely myself.

2 Q Since I note that approximately sixty-five
3 per cent of it is taken verbatim from the Department
4 of State's "Peace and War" or its "Diplomatic Rela-
5 tions" or Mr. Hull's Statement to Congress, may I
6 assume that you wrote those documents also?

7 A There were a number of people that collabo-
8 rated in the drafting or preparation of the documents.
9 I was one of those people.

10 Q As one of the staff of the Office of Far
11 Eastern Affairs of the Department of State in 1941,
12 did you participate rather extensively in the Japan-
13 ese-American conversations?

14 A I was present at most of the conversations
15 between the Secretary of State and the Japanese rep-
16 resentatives.

17 THE PRESIDENT: Speak closer to the micro-
18 phone, please, Mr. Ballantine.

19 The IBM is out of order. We will recess
20 for fifteen minutes.

21 (Whereupon, at 1045, a recess
22 was taken until 1100. after which the
23 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: This Court will not sit on
4 Thanksgiving Day which is Thursday of next week.
5 That is because it has been decreed a holiday by the
6 Supreme Commander.

7 Will the reporter kindly repeat the last
8 three questions and answers?

9 (Whereupon, the official court
10 reporter read as follows:)

11 "Q Who prepared your affidavit, Mr. Witness?

12 "A I prepared it largely myself from the
13 records.

14 "Q That is to say, you wrote it yourself?

15 "A Largely myself.

16 "Q Since I note that approximately sixty-five
17 per cent of it is taken verbatim from the Department
18 of State's 'Peace and War' or its 'Diplomatic Rela-
19 tions' or Mr. Hull's Statement to Congress, may I
20 assume that you wrote these documents also?

21 "A There were a number of people that collabor-
22 ated in the drafting or preparation of the documents.
23 I was one of those people.

24 "Q As one of the staff of the Office of Far
25 Eastern Affairs of the Department of State in 1941,

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1 did you participate rather extensively in the Japan-
2 ese-American conversations?

3 "A I was present at most of the conversations
4 between the Secretary of State and the Japanese
5 representatives.

6 THE PRESIDENT: Speak closer to the micro-
7 phone, please, Mr. Ballantine.

8 The I. B. M. is out of order. We will
9 recess for fifteen minutes.

10 BY MR. BLAKENEY (Continued):

11 Q Did you also, then, Mr. Witness, attend to
12 the drafting of proposals and counter proposals and
13 other documents submitted in the course of these
14 conversations?

15 A I collaborated as one of a team in the
16 drafting of documents.

17 Q Was that team under your direction?

18 A That team was under the direction --
19 constant direction of the Secretary of State him-
20 self, and I was the most junior member of the three
21 principal advisers of the Secretary of State on Far
22 Eastern matters.

23 Q May we have the names of the other two,
24 please?

25 A Stanley K. Hornbeck, adviser -- political

BALLANTINE

CROSS

1 adviser, and Maxwell Hamilton, Chief of the Division
2 of Far Eastern Affairs.

3 Q You were, then, however, quite familiar with
4 the course and progress of the conversations, were
5 you not?

6 A Yes.

7 Q The explanation of these conversations given
8 in your affidavit commences with the suggestion which
9 had been informally brought to the attention of the
10 Secretary of State. This you say was followed by
11 discussions between the Secretary of State and the
12 President and the Japanese Ambassador.

13 A Yes.

14 Q And you then referred to the Japanese pro-
15 posal of the 12th of May, which is exhibit B to your
16 affidavit. Was there not actually a preceding draft
17 proposal of some nature?

18 A There was a draft proposal brought inform-
19 ally to the Secretary of State on April 9.

20 Q That is the document, is it not, which has
21 been introduced in this case as exhibit No. 1059,
22 entitled "Proposal Presented to the Department of
23 State Through the Medium of Private American and
24 Japanese Individuals on April 9, 1941"?

25 A Yes.

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CROSS

1 Q And the existence of this document then
2 explains the references in your exhibit B to amend-
3 ments to the original draft proposal, does it not?

4 A That is correct.

5 Q Can you tell us who prepared this original
6 draft presented on the 9th of April, 1941?

7 A I do not know. It would be just an assump-
8 tion on my part.

9 Q Well, let me put it this way: Who were the
10 private individuals, American and Japanese, whom
11 you knew to be working on this question and who dis-
12 cussed it with the Department of State?

13 A The private individuals were a Mr. WIKAWA,
14 Takao and a Colonel IWAKURO, and a Father Drought of
15 the Maryknoll Mission, and also, I believe, Bishop
16 Walsh of the Maryknoll Mission.

17 Q Was Postmaster General Walker also one of
18 that group?

19 A As far as I know, he didn't participate in any
20 drafting; he simply acted as medium for communica-
21 tions.

22 Q Bishop Walsh and Father Drought had visited
23 Japan either early in 1941 or late in 1940, had they
24 not?

25 A According to what Father Drought told me,

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CROSS

1 he and Bishop Walsh had visited Japan in the latter
2 part of 1940.

3 Q Did they also tell you that while in Japan
4 they had had talks with Premier KONOYE and other
5 individuals in high offices?

6 A They told me that they had talks with high
7 individuals. I do not recall definitely whose names
8 they specifically mentioned except Mr. MATSUOKA.
9 They did mention him specifically, I recall definite-
10 ly.

11 Q Then you do not know whether these people
12 prepared the original draft proposal, but they were
13 interested in it and working on the matter.

14 A That is correct.

15 Q How was this draft actually brought to the
16 attention of the President and the Secretary of
17 State?

18 A If I recall correctly, it was delivered to
19 the Secretary of State by the Postmaster General,
20 but I couldn't swear to that.

21 Q In discussing the matter, you used several
22 times the expression "it was represented that."
23 May I ask who made these representations? I am re-
24 ferring to paragraph six of page 7 of your affidavit.
25

A It was represented -- my information on it

BALLANTINE

CROSS

1 was derived from Father Drought; and, from what he
2 told me, he had got his word from WIKAWA.

3 Q Mr. WIKAWA was a private citizen connected
4 with a bank in New York, was he not?

5 A So far as I know, at that time he was not;
6 he was connected with the Cooperative Banks in
7 Japan.

8 Q After this draft proposal came into the
9 hands of the Department of State, it was discussed,
10 was it not, between Secretary Hull and Ambassador
11 NOMURA?

12 A It was discussed on April 14 and April 16
13 as the record in Foreign Relations will show.

14 Q Ambassador NOMURA told Secretary Hull that
15 he was aware of the existence and nature of this
16 draft, did he not?

17 A Yes. He said he collaborated with these
18 private individuals.

19 Q However, there was no suggestion that the
20 draft had official standing, was there?

21 A That is correct.

22 Q On either side.

23 Now, leaving the question of this draft out
24 of consideration for the moment, I ask you at whose
25 initiative the Japanese-American conversations were

BALLANTINE

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1 commenced?

2 A I think you will find in the record on --
3 some time in March that Mr. Hull and Ambassador
4 NOMURA had agreed that such efforts to be made to
5 improve Japanese-American relations were to be
6 considered a joint initiative.

7 Q Isn't it a fact that so far as the records
8 show, the subject was first raised by President
9 Roosevelt in talking with Ambassador NOMURA on the
10 14th of February, 1941?

11 A I don't know how far you could go on that.
12 It would normally lead between the Ambassador coming
13 to present his credentials to the President -- the
14 President would take the lead in a conversation of
15 that nature.

16 Q Well, the point that I am asking you to con-
17 firm is that, whatever would usually happen, on this
18 occasion the President did, in effect, invite Am-
19 bassador NOMURA to initiate informal discussions
20 with the Secretary of State.

21 A Well, I think that record speaks for
22 itself.

23 Q In any event, may we assume that the record
24 as published in the Department of State's "Foreign
25 Relations" is correct?

BALLANTINE

CROSS

1 A Yes.

2 Q Have you any information as to the light in
3 which the Japanese representatives -- the Ambassador
4 and others -- viewed the draft proposal of the 16th
5 of April and, specifically, whether they viewed it
6 as being an American proposal or a Japanese proposal
7 or a private individuals' proposal?

8 A I think the Secretary of State made it
9 perfectly clear to the Japanese Ambassador that it
10 was not an American proposal because he explained
11 that there were some parts in it we could accept,
12 some parts that would require revision, some parts
13 we couldn't accept.

14 Q May I ask whether Secretary Hull also re-
15 quested Ambassador NOMURA to obtain instructions from
16 his government on the basis of this draft proposal
17 before conversations should start?

18 A As I recall, Mr. Hull said to Ambassador
19 NOMURA that he could not have official conversations
20 except on a proposal that the Japanese Ambassador
21 presented under instructions. I think that he also
22 left to the Ambassador the question of whether he
23 wanted to get instructions on that particular pro-
24 posal.

25 Q And Ambassador NOMURA then did later state

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1 that he had been authorized to commence discussions,
2 did he not?

3 A He did so when he presented the draft of
4 May 12.

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1 Q The draft of the 12th of May purports to be
2 a proposal of amendments to the original text of the
3 16th of April. Do you consider that there are sig-
4 nificant differences between the two drafts?

5 A In the first place, the question of whether
6 it is an amendment or a redraft is a matter to be
7 inferred from their explanatory statement. There are
8 quite a few differences, however, between the April 9
9 draft and the May 12 draft.

10 Q In your affidavit you have undertaken a com-
11 parison of the draft of the 16th of May with the
12 American counter proposal of the 21st of June. /s
13 I understand from this comparison, what you designate
14 as essential differences of substance between the two
15 drafts fall into three broad classes. These are, first,
16 the question of the attitudes of the respective
17 governments toward the European War, or what we might
18 call the Tripartite Pact question. Is that so?

19 A That is one.

20 Q Second, the question of Chinese-Japanese
21 relations and the settlement of the China Affair. Is
22 that another?

23 A That is correct.

24 Q And, thirdly, the question of the economic
25 activities of the two nations in the Pacific area and

BALLANTINE

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1 especially with reference to non-discriminatory
2 commercial opportunity in China.

3 A Well, the third I would modify to say non-
4 discriminatory -- the principle of non-discrimination
5 in international intercourse throughout the Pacific
6 area.

7 Q Very well. We will accept your amendment.
8 Then these three main questions represented, as of
9 that time, the fundamental points of difference between
10 the two governments, did they?

11 A That is correct.

12 Q And is it also correct that, broadly speaking,
13 these three questions furnished the subject matter of
14 the conversations from beginning to end?

15 A Except as created by the new situation, by
16 Japan's movement into southern Indo-China. There was
17 the Indo-China question and the resulting freezing
18 measures which added two further topics.

19 Q Then it was these three questions which I
20 have mentioned, plus the Indo-China and freezing of
21 assets question which you have added, which finally
22 resulted in the failure of any agreement?

23 A I would say so except that these questions
24 were -- represented applications of principles of
25 peace which caused the failure to reach an agreement.

BALLANTINE

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1 Q Yes. That is to say that, as usually occurs
2 in diplomatic negotiations, the principles were agreed
3 upon but the applications could not be agreed upon.
4 Is that so?

5 A Well, even the fundamental principles, there
6 were no clear-cut commitments by the Japanese.

7 Q In any event, let us discuss these points of
8 difference seriatim, and first the Tripartite Pact
9 question. Now, is this a fair statement of the problem
10 involved, that the problem on our side was to convince
11 the Japanese that our involvement, which we foresaw, in
12 the European War was being brought about by the demands
13 of American self-defense, and that in a situation so
14 brought about the Japanese should agree not to consider
15 themselves bound to action under the Tripartite Pact?

16 A Our problem was to -- we envisaged an agreement
17 for peace covering the entire Pacific area. One of
18 the possibilities through which war might come in the
19 Pacific area was if Japan, interpreting its obligations
20 under the Axis, thought it might have to attack us
21 if we got involved in the European War. We wanted to
22 make perfectly clear to the Japanese our concept of
23 becoming involved through acts of self-defense.

24 THE PRESIDENT: Mr. Ballantine, to save time
25 will you kindly speak in short sentences and pause for

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1 translation at the end of each sentence?

2 Q Had you finished your answer?

3 A Yes.

4 Q The differences between the parties on this
5 point eventually turned on the definition of self-
6 defense, did they not?

7 A No. The difference turned on the failure of
8 the Japanese to give us any assurance that we would
9 not -- that Japan's obligations under the Tripartite
10 Pact, as she interpreted herself, did not require Japan --
11 or might not require Japan to attack us. There was no
12 difference in the concept that each country must be
13 its own judge of its own self-defense.

14 Q Did not the Japanese negotiators, time after
15 time, state to the officials of the Department of State
16 that they did dissent from the American contention that
17 each nation had a right to judge the requirements of
18 self-defense?

19 A I don't recall any contention of that nature.

20 Q So there shall be no misunderstanding whatever,
21 I will put it still more specifically. Did not Amba-
22 sadors NOMURA and KURUSU repeatedly state to Secretary
23 Hull and to you that they could not accept the American
24 definition of self-defense because it was too broad?

25 A There was no difference on the point that each

BALLANTINE

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1 nation must be the judge of what should constitute its
2 own self-defense. What the Japanese representatives
3 said was they could not, in an agreement, give us a
4 blank check and agree not to attack us on our concept
5 of self-defense.

6 Q Attack us, that is, if we became involved in
7 the European War acting in self-defense?

8 A They said that if we became involved in the
9 European War they would independently make their own
10 interpretations of what their obligations were under
11 the alliance.

12 Q But we said that if, acting in self-defense,
13 we became involved in that war there was no room for
14 interpretation of their obligations.

15 MR. KEENAN: Mr. President, I would like to
16 enter an objection to the question in that form unless
17 Mr. Blakeney explains whom he means by "we". He is
18 representing Japanese defendants accused in this case.

19 MR. BLAKENEY: I have been an American all my
20 life and I still speak as one.

21 THE PRESIDENT: The objection, of course, was
22 to your making a statement to the witness instead of
23 putting a question to him. You can use your own dis-
24 cretion as to the extent to which you will identify
25 yourself with your Japanese clients.

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1 MR. BLAKINEY: I will be glad, if the Tribunal
2 desires, to add "is that not so."

3 THE WITNESS: May I have the question repeated
4 again?

5 (Whereupon, the question was read by
6 the official court reporter as follows: "But we
7 said that if, acting in self-defense, we became
8 involved in that war there was no room for inter-
9 pretation of their obligations, is that not so?")

10 A We wanted clarification from the Japanese as
11 to what their attitude was, what they would do in case
12 we became involved through acts of self-defense, and we
13 explained clearly what we meant by self-defense.

14 THE PRESIDENT: We will adjourn now until
15 half past one.

16 (Whereupon, at 1200, a recess was taken.)
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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at
2
3 1330.

4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now resumed.

6 THE PRESIDENT: Major Blakeney.

7
8 J O S E P H W. B A L L A N T I N E, called as a
9 witness on behalf of the prosecution, resumed
10 the stand and testified as follows:

CROSS-EXAMINATION

11
12 BY MR. BLAKENEY (Continued):

13 MR. BLAKENEY: May I ask the reporter to read
14 the last answer.

15
16 (Whereupon, the answer was read by
17 the official court reporter as follows: "We
18 wanted clarification from the Japanese as to
19 what their attitude was, what they would do in
20 case we became involved through acts of self-
21 defense, and we explained clearly what we meant
22 by 'self-defense.'")

23 Q Then I ask you again whether the Japanese
24 response was not in effect this: That they agreed
25 unconditionally to the existence of the right of

PALLANTINE

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1 self-defense, but could not accept your explanation
2 of its scope?

3 A The right of self-defense was not at issue
4 nor was the question as to its -- our definition as to
5 its scope at issue. The question of their giving
6 us any commitments after we explained what our
7 attitude was.

8 Q But did they not explain to you that the
9 reason that they could not give that commitment was that
10 they could not give you a blank check for anything
11 which you might call self-defense.

12 A That is correct, but I should like to explain.
13 The Japanese came to us and asked for an agreement
14 covering peace in the whole Pacific area. There was one
15 factor which might be likely to cause a disruption of
16 that peace. Japan was a member of the Tri-Partite
17 Alliance. There was a possibility that we might
18 become involved in the war in the Atlantic. We wanted
19 to ascertain from them their attitude, their obligations
20 under the Pact as it affected that possibility.

21 Q And your position was, the position of the
22 United States was, was it not, that certain acts were
23 being taken which in the view of the United States were
24 self-defense?

25 A Certain acts were being taken or might be taken

BALLANTINE

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1 in the future.

2 Q And the United States was requesting Japan
3 to agree that if such acts of self-defense were taken
4 in the future and did lead to involvement in the
5 European war, that Japan would not be committed to
6 action under the Tri-Partite Pact; is that a correct
7 statement?

8 A That is only part of the story. The rest
9 of the story is that we didn't ask for a new agree-
10 ment. Japan came to us and asked for an agreement;
11 so when they proposed us this proposal of May 12,
12 we wanted clarification on that point.

13 Q And the Japanese wanted clarification on the
14 point of how far you contended that your right of
15 self-defense extended; did they not?

16 A We volunteered that information to them at
17 the outset.

18 Q How far did the right of self-defense extend?

19 MR. KEENAN: I object to that question, Mr.
20 President, as being an improper one.

21 THE PRESIDENT: Do you mean to ask him whether
22 the extent of the right was discussed and decided upon?

23 MR. BLAKENEY: Yes, sir, I do.

24 THE WITNESS: I think that that right of
25 self-defense is made clear in that speech that Mr. Hull

BALLANTINE

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1 made, which is in the record.

2 Q That is Mr. Hull's speech of the 24th of
3 April, 1941?

4 A I am not very good at remembering dates, but
5 I believe that is correct.

6 Q At any rate, was that the speech wherein he
7 stated that the defense of the United States called
8 for resistance wherever resistance would be most
9 effective?

10 A I didn't quite get the point of your ques-
11 tion.

12 May I have it repeated, please.

13 (Whereupon, the last question was
14 read by the official court reporter.)

15 A (Continuing) That is correct.

16 Q Did he also point out in that speech that
17 the United States need not await an attack on the
18 American continent to call into exercise that right of
19 self-defense?
20

21 MR. KEENAN: If the Court please, the
22 prosecution objects to that on the ground that the
23 speech is in evidence, speaks for itself, and there
24 is no point in having this witness repeat certain
25 parts of it.

MR. BLAKENEY: The witness is not being asked

BALLANTINE

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1 to repeat anything. He referred to the speech
2 for his definition and I am asking him if the definition
3 from that speech, as I stated it, is correct.

4 THE PRESIDENT: You can ask him whether
5 Mr. Hull is correctly reported in that speech, if
6 you really challenge its accuracy.

7 MR. BLAKENEY: I do not challenge it's
8 accuracy, sir. I am trying to make sure that the
9 witness refers to the definition in the speech which
10 I am offering to him as being the State Department's
11 definition presented to the Japanese.

12 THE PRESIDENT: The objection is upheld if that
13 is so.

14 Major Blakeney, I do not want to interfere
15 with the cross-examination, or I should say the Tribunal
16 does not, but it does appear to me at all events if
17 you put to this witness the things which you say
18 NOMURA and KURUSU said to him, or to Mr. Hull, and
19 which do not appear in the exhibits, you will give us
20 the maximum assistance. We will get very little
21 assistance from any academic discussion about the mean-
22 ing of self-defense, or the right to it.

23 MR. BLAKENEY: I propose doing what your Honor
24 suggests, but I should like to point out that I think
25 this witness can give us great assistance in one other

BALLANTINE

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1 way. I think that we laymen, or at least this
2 layman, require considerable assistance in under-
3 standing diplomatic negotiations, and here **you** have
4 an expert on the subject.
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1 THE PRESIDENT: From what I told you yester-
2 day I think you should have inferred that we are not
3 treating him as an expert; that is, as a person who
4 can draw conclusions for us.

5 There is no diplomatic language, really;
6 there may be a diplomatic style. But we reserve the
7 right to give our meaning to the words used without
8 any help from any diplomat.

9 MR. BLAKENEY: Perhaps the term "expert" was
10 ill-chosen. I meant to suggest that this witness
11 actually conducted many of these negotiations, many
12 of the conversations which do not appear in the pro-
13 posals and counter-proposals but supplement them.

14 THE PRESIDENT: It may occur to the Members
15 of the Tribunal that the Japanese put all they had to
16 say in writing. If you have been instructed that
17 something has been left out, something that was said
18 to Mr. Hull or to Mr. Ballantine, you may put it to
19 him to see whether he accepts it or not.

20 MR. BLAKENEY: Obviously, sir, it was not all
21 put in writing, because the witness has testified at
22 length about informal conversations which went on over
23 a period of six months.

24 THE PRESIDENT: There will be, of course, much
25 reiteration, and there will be much stating of the

BALLANTINE

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1 same thing in different ways. But we can rest assured
2 that the Japanese did not fail to put in writing any-
3 thing that was really material; unless you are
4 instructed that something material was omitted and
5 was known to Mr. Hull or to the witness.

6 MR. BLAKENEY: No, sir, I am not instructed to
7 that effect. But my position, which I apparently haven't
8 yet clearly stated, is that the negotiations, them-
9 selves, the conversations, are material. Many of
10 these documents on their face seem to say that the
11 parties were in agreement, but we know that they were
12 not. And I am trying to get--

13 THE PRESIDENT: It is going to be most
14 difficult for us to pass over the documents and rely
15 on conversations which the witness may or may not
16 recollect.

17 MR. BLAKENEY: I do not ask the witness for
18 his memory of the conversations. They are recorded.

19 THE PRESIDENT: Then you are asking him to
20 interpret for us the writings which record them. We
21 will not let him do it.

22 MR. BLAKENEY: I am asking him to narrow down
23 for the Tribunal the actual issues in dispute so we
24 can see what they came to.
25

BALLANTINE

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1 BY MR. BLAKENEY (Continued):

2 Q We were speaking of self-defense. Was the
3 American position on the scope of the right of self-
4 defense also defined in a speech by President Roose-
5velt given over the radio on the 27th of May 1941?

6 MR. KEENAN: Mr. President, I object to
7 that question. There is nothing clearer than that
8 the President of the United States is the chief execu-
9 tive of that government. What he says is recorded in
10 writing and speaks for itself, and this Court can
11 interpret the language as well as either this witness
12 or counsel for the defense.

13 MR. BLAKENEY: I do not ask him to interpret.
14 I ask him whether it is a fact that there was such a
15 speech defining the right of self-defense.

16 MR. KEENAN: Mr. President, if I may be per-
17 mitted to observe, the speech is in the record. It is
18 an exhibit in this case. I would suggest again that
19 counsel is indirectly attempting to do that which I
20 understood the Court said it did not wish to be done.
21 Therefore, I object.

22 THE PRESIDENT: Are you referring to a speech
23 already in evidence, Major Blakeney?

24 MR. BLAKENEY: Well, frankly, sir, I do not
25 know. There are one thousand two hundred some odd

BALLANTINE

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1 exhibits, and I am just not sure.

2 MR. KEENAN: Mr. President, we have a speech
3 in the record of President Roosevelt dated in October.
4 That may be a different one that Major Blakeney is
5 referring to.

6 THE PRESIDENT: Mention the date of the speech
7 to the witness.

8 Q 27th of May, 1941.

9 A I do not have any present recollection of
10 that speech.

11 Q Do you remember any speech of President
12 Roosevelt in the spring of 1941 in which he stated
13 that the United States will decide for itself whether
14 and when and where our American interests are attacked
15 or our security threatened?

16 A I have no clear recollection of any speech
17 at any particular time.

18 Q Do you agree that acceptance of the American
19 definition of the right of self-defense required
20 foreign nations to give advance approval to America's
21 involvement in the European War as self-defense when-
22 ever and however it might have come about?

23 THE PRESIDENT: He told you the definition
24 recognized by the State Department was in Mr. Hull's
25 speech; and it will be for us to say what it means.

BALLANTINE

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1 Q When the United States War Council, so-called,
2 and the Cabinet of the United States on various occa-
3 sions, such as the Cabinet meeting of the 7th of November
4 1941, discussed the possibility of ourselves attacking
5 Japan, was that considered in the light of an act of
6 self-defense?

7 MR. KEENAN: The prosecution objects to
8 that question as being without the scope of the cross-
9 examination, proper **cross**-examination.

10 MR. BLAKENEY: It seems to me that the scope
11 of proper **cross**-examination of the witness who conducted
12 these negotiations involving these questions is any-
13 thing concerning the interpretation of the question --
14 not of documents, but the question.

15 THE PRESIDENT: We will permit him to testify
16 only as to what was said and done during the
17 negotiations.
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1 Q Was any such statement as that made to you
2 by Secretary of State Hull or any other American
3 official -- high official?

4 A No.

5 Q I refer to the Executive Order of the 26th
6 of July, 1941, freezing Japanese assets in the
7 United States referred to on page 10 of your affidavit,
8 paragraph 3. You stated that, if I understand you
9 correctly, that this executive order was an act of
10 self-defense. Was this action, freezing assets, taken
11 jointly by agreement with the governments of other
12 nations?

13 A I do not know.

14 Q Do you know whether that action of the
15 United States Government was followed on the following
16 day -- was adopted on the following day by the govern-
17 ments of Great Britain and the Netherlands?

18 A I merely know that that action was either
19 followed or taken about the same time by these two
20 other governments.

21 Q Are you able to state whether the effect of
22 the British and Dutch action upon trade between those
23 nations and Japan was the same as the effect of the
24 American action upon Japanese-American trade; that is,
25 to bring about its virtual cessation?

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22 the British and Dutch action upon trade between those
23 nations and Japan was the same as the effect of the
24 American action upon Japanese-American trade; that is,
25 to bring about its virtual cessation?

BALLANTINE

CROSS

1 A I do not know.

2 Q Do you know whether the effect of the war
3 in Europe had been to bring about a virtual cessation
4 of trade between Japan and European countries?

5 THE PRESIDENT: That is beyond the scope
6 of the affidavit, which is confined to the United
7 States position.

8 MR. BLAKENEY: Well, possibly he does not
9 know, but he does testify in his affidavit about the
10 freezing of assets by Great Britain and the Nether-
11 lands.

12 THE PRESIDENT: The American freezing.

13 Q Well, let me sum it up this way: Do you
14 know whether after the freezing of assets by these
15 governments Japan was in effect cut off from commercial
16 intercourse with all of the world except those parts
17 of Asia adjacent to her?

18 A I have no direct knowledge of the fact. I
19 have not seen any trade figures, but it would be just
20 a matter of assumption.

21 Q Do you know whether it is correct to say
22 that the result of the freezing of assets by these
23 various nations and the consequent cessation of trade
24 had the effect of reducing Japan's foreign trade by
25 about seventy-five per cent? Pardon me, I meant to

BALLANTINE

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1 say "imports", not "foreign trade."

2 A I don't think I have ever made a calculation
3 of that.

4 Q Are you able to say that that is approximately
5 correct without making a calculation?

6 A Well, I would make it within a much wider
7 range than that. It might be seventy-five percent,
8 but then it might be, for all I know, it might be
9 fifty-five per cent.

10 Q Then is it not true that the freezing of
11 assets with the consequent cessation of trade to
12 Japan constituted economic warfare upon Japan?

13 THE PRESIDENT: He is invited to express an
14 opinion, and we do not want his opinions.

15 Q Did the State Department know in taking the
16 steps toward freezing of Japanese assets that such
17 steps would inevitably drive Japan to seek elsewhere
18 and perhaps in other ways the necessary imports and
19 raw materials upon which to operate?

20 A One could hardly know in advance what some-
21 body else is going to do.

22 Q Did not the Department of State consider it
23 highly probable that Japan would be compelled so to do?

24 A Not necessarily, because at that time the
25 President offered Japan a peaceful alternative to the

BALLANTINE

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course that she was pursuing.

1 Q What offer do you refer to?

2 A His offer for the neutralization of Indo-China
3 of July 24th.

4 Q But I refer to the time when it was decided
5 to impose the assets freezing order, and I ask you
6 whether the State Department did not consider it
7 highly probable then that with the imposition of that
8 order and its consequent effects Japan would turn
9 elsewhere to secure the necessary trade and supplies?

10 A That was only one alternative. The other
11 put by the President's offer in regard to Indo-China
12 was still pending. It was only two days since the
13 offer was made.

14 Q Well, mention of the Indo-China question
15 brings up another point. You knew, of course, the
16 Japanese contention and complaint that Japan was
17 being encircled?

18 A We had heard a great deal about that.

19 Q Now was there not in truth an A, B, C, D,
20 American, British, Chinese, Dutch cooperation on the
21 subject of Japan and Pacific relations?

22 A Naturally, in the situation then prevailing,
23 it was necessary or desirable that the countries
24 affected would consult with each other about means of
25

BALLANTINE

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self-defense.

1 Q Then you of the Department of State did know
2 that from, say January 1941, there had been military
3 cooperation among those nations plus Australia with
4 respect to possible action against Japan?

5 A I would say military consultations.

6 Q And did you of the Department of State know
7 during the year 1941 that the joint defense plans of
8 those nations were the only plans in existence for
9 military defense of American Pacific territories?

10 A I do not know that any particular plans of
11 consultation were the only plans for defense.

12 Q Now, of course, the United States never accepted
13 the implications of the term "encirclement," did it?

14 A The Acting Secretary of State told the
15 Japanese Ambassador that the American policy was the
16 opposite of encirclement policy.

17 Q Nevertheless, accepting or rejecting the
18 concept of encirclement, must we not concede that there
19 was a basis in fact for the Japanese view that there
20 existed the A, B, C, D combination for action against
21 her?
22

23 MR. KEENAN: Mr. President, the prosecution
24 objects to that question as being without the scope --
25 proper scope of cross-examination. This witness is

BALLANTINE

CROSS

1 offered to tell what he knew and what he saw and
2 what he heard with reference to conversations leading
3 towards peace. Now he is being asked about military
4 combinations without the scope of the State Department
5 or without the scope of his direct examination.

6 THE PRESIDENT: He is asked in effect to assume
7 the Japanese had a certain view, and then he is asked
8 whether on that assumption there was not a basis for
9 that view. That does not appear to be a proper question
10 to put in cross-examination.

11 You, Major Blakeney, should know upon what
12 the Japanese based their view, if they held it, and
13 you should put to the witness that such were the facts;
14 but you cannot properly ask him whether the Japanese
15 view, if they held it, was properly held.

16 MR. BLAKENEY: I do not insist on the question
17 at all, sir, but I should like to point out that the
18 witness has testified in chief in very sweeping terms
19 as to the attitude of the Department of State in
20 negotiating.

21 THE PRESIDENT: I told you the Tribunal would
22 disregard everything in the affidavit except statements
23 of fact; that we would disregard his opinions, and only
24 to his opinions can you justly apply the term "sweeping."

25 Q Well, let us return to the negotiations. On

BAILANTINE

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1 the question of the Tripartite Pact, did the positions
2 of the parties gradually draw closer together?

3 A No.

4 Q We were referring to your comparison of the
5 draft proposals of the 12th of May and the 21st of
6 June. Meanwhile, however, have you not omitted one
7 of the intervening drafts, that of the 31st of May?

8 That is the American draft of the 31st of May.

9 A I did omit that in my affidavit.

10 Q Was there any particular reason for
11 its omission except that you considered it of little
12 importance?

13 A Well, our June 21st draft was up to the time
14 of our November 26th proposal, our last complete pro-
15 posal. It represented the end of the thinking out
16 and the discussions together of their original pro-
17 posal of May 12th and, therefore, I thought to save
18 time that I would make a comparison between those two
19 proposals.

20 Q This draft, however, I refer to the 31st of
21 May draft, does appear in the Department of State's
22 "Foreign Relations," Volume II, does it not?

23 THE PRESIDENT: Have you seen Exhibit 1078,
24 Major Blakeney?

25 MR. BLAKENEY: Which is that, sir?

BALLANTINE

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1 THE PRESIDENT: It bears on that question.

2 MR. BLAKENEY: 1078? I do not recognize it
3 by number, sir.

4 THE PRESIDENT: It is the proposal of the
5 31st of May, by Mr. Hull to Ambassador NOMURA.

6 MR. BLAKENEY: That is the document in
7 question, and I wish to ask the witness to confirm
8 that it contains this statement concerning the Tri-
9 partite Pact question.

10 THE PRESIDENT: The document speaks for
11 itself, Major. We do not want his elucidation of it.

12 MR. BLAKENEY: I do not know any way to
13 call the Tribunal's attention to the point I am
14 trying to cross-examine unless I can call it to his
15 attention.

16 THE PRESIDENT: Very well, proceed.

17 Q Very well. Then the 31st of May draft was
18 redrafted in your June proposal, was it not?

19 A That is correct.

20 Q And was it on the basis of this June draft,
21 or the May draft, or both, that on the 28th of August
22 Ambassador NOMURA said to Secretary Hull that he did
23 not feel there would be any difficulties about the
24 Tripartite Pact question at the proposed Roosevelt-
25 KONOYE meeting?

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1 A I do not know the basis of NOMURA's contention.

2 Q Well, the June draft proposal was the then
3 current one, if any was, was it not?

4 A That is correct.

5 Q Do you remember that at that time, in dis-
6 cussing the proposed meeting between President Roose-
7 velt and Premier Prince KONOYE, that Ambassador NOMURA
8 said that the Japanese people regarded their adherence
9 to the Axis as merely nominal?

10 A I do not recall that definitely at that time,
11 but I do know that there was a great deal of confusion
12 and conflict between what they would say at one time
13 and another time.

14 THE PRESIDENT: We will recess for fifteen
15 minutes.

16 (Whereupon, at 1445, a recess was taken
17 until 1500, after which the proceedings were
18 resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Major Blakeney.

4 BY MR. BLAKENEY (Continued):

5 Q During the negotiations on the subject of
6 the Tripartite Pact, was it the position of the
7 Department of State that Japan should be required
8 formally to abrogate the Pact?

9 A As far as I know, we never took any position
10 on that point, only we didn't want any situation or
11 interpretation of that Pact which was inconsistent
12 with the peace agreement which the Japanese sought
13 for the Pacific.

14 Q Then the Department of State was requiring,
15 and would have been satisfied, would it, merely with
16 such an interpretation by Japan of the Pact as would
17 not be in conflict with the peaceful settlement in
18 the Pacific?

19 A I think I can answer that question best by
20 referring you to the point -- I believe it was point
21 9 -- in the steps to be taken by the two countries in
22 the November 26 proposal.

23 Q Yes. That is, then, what was demanded was
24 an interpretation, not a denunciation of the Pact.

25 A I think that that provision -- the wording

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1 speaks for itself. But, when you use the word
2 "demand," that should -- you should consider that
3 in reference to the paragraph in our explanatory
4 statement, the penultimate paragraph of the explana-
5 tory statement, the paragraph before the last.
6 Shall I read that provision?

7 Q If you will just tell us what page it is
8 on.

9 A It is on page 2 of exhibit L.

10 Q Yes. I think you need not read it.

11 Do you remember what your representative in
12 Japan, Ambassador Grew, advised the Department on the
13 29th of September relative to the Tripartite Alliance?

14 A I would have to have my memory refreshed on
15 that point.

16 Q I refer especially to the following words of
17 Ambassador Grew as taken from his book "Ten Years in
18 Japan," page 441; that the Ambassador points out that
19 in regard "to Japan's Axis relations the Japanese
20 Government, though refusing consistently to give an
21 undertaking that it will overtly renounce its alliance
22 membership, actually has shown a readiness to reduce
23 Japan's alliance adherence to a dead letter by its
24 indication of willingness to enter formally into ne-
25 gotiations with the United States."

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1 Do you now recollect that despatch of Mr.
2 Grew's?

3 A Yes, I recollect it.

4 Q What was the view of the Department on that
5 suggestion of Mr. Grew's?

6 A With regard to that point, there needed to
7 be something much more definite and concrete.

8 Q "Much more definite" -- what?

9 A "And concrete."

10 Q Was anything more definite and concrete
11 offered thereafter by the Japanese Ambassadors?

12 A I believe that KURUSU said at one time that
13 Japan might do something to outshine the other
14 alliance, but that wasn't made any more explicit
15 than that.

16 Q Did not the Department of State understand
17 that remark of Mr. KURUSU's as meaning that the con-
18 clusion of an agreement for general peace in the
19 Pacific would so unequivocally fix Japan's orienta-
20 tion that the Tripartite Pact would be a dead
21 letter?

22 A We didn't reach that point in the conversa-
23 tions. We didn't reach a point where all the other
24 things were so clear that we would have to reach a
25 decision on this one remaining question. There were

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1 too many outstanding questions. The Japanese
2 proposals were being successfully narrowed down.

3 Q You see, Mr. Witness, you repeat that the
4 Japanese proposals were being narrowed, but I am
5 trying to find the basis of fact for that statement.
6 I am asking you now whether the Japanese representa-
7 tives did not give a series of different suggested
8 phraseologies for the interpretation of this Tri-
9 partite Pact in the endeavor to meet the American
10 position.

11 A The furthest they got was to say that they
12 would interpret the Pact independently.

13 Q Did they explain "independently" of whom?

14 A Well, from the context it was clear that
15 they meant to imply that they weren't under German
16 domination and that they were an independent nation,
17 and that they would reach their own decision without
18 reference to Germany. I suppose that's what they
19 meant.

20 Q Was not that explanation of an intention to
21 interpret the Pact independently considered by the
22 Department of State to be sufficient evidence of
23 Japan's desire to escape from the Tripartite Pact
24 without formally denouncing it?
25

A We had no basis for reaching that conclu-

BALLANTINE

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1 sion. At one time, I believe, the Secretary of
2 State said that the Cabinet of Japan might change,
3 and what might go for one Cabinet might not go for
4 the next Cabinet.

5 Q Let me call your attention to exhibit J
6 to your affidavit which is the oral statement handed
7 by the Secretary of State to the Japanese Ambassador
8 on the 2nd of October.

9 THE PRESIDENT: That is exhibit No. 1245-G.

10 Q (Continuing) I refer to page 4 of para-
11 graph 2 thereof where the language is that, with
12 reference to the Tripartite Pact -- I am paraphras-
13 ing -- "this Government has noted with appreciation
14 the further step taken by the Japanese Government
15 to meet the difficulties inherent in this aspect of
16 the relations between the two countries."

17 Now, if the Japanese position in this
18 matter was being consistently narrowed, what was
19 the further step which was noted with appreciation?
20

21 A The position of the Japanese Government was
22 being consistently narrowed primarily in regard to
23 commitments of peaceful intent -- they were qualifi-
24 cations, and also in regard to qualifications in
25 regard to non-discrimination of international inter-
course. The very next sentence after the one you

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1 quoted shows clearly that the American Government was
2 not satisfied with the step that the Japanese Govern-
3 ment had taken.

4 Q Yes, I was going to ask you about that. The
5 American Government was not satisfied, and yet here
6 it clearly states that some progress had been made,
7 does it not?

8 A I think you will note the general tone of
9 that note. We tried to be as conciliatory and
10 friendly as possible. The first sentence should be
11 interpreted in the light of that atmosphere that we
12 were trying to create.

13 Q Well, now, Mr. Witness, that first sentence
14 either does or does not mean what it says. Which is
15 it?

16 A You will note the very first paragraph of
17 that communication we had in mind, that Japanese
18 proposal of September 6, was what we were largely
19 addressing ourselves to. The Japanese proposal of
20 September 6 is contained in exhibit G; and under C
21 of that report the Japanese had gone a little further
22 in their proposal of May 12. That is the last
23 clause, C: "In case the United States should par-
24 ticipate in the European War, the interpretation
25 and execution of the Tripartite Pact by Japan shall

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1 be independently decided." I can't say positively
2 at this late date that that was the point to which
3 we were referring, but I think that that was, that
4 they had taken this further step.

5 Q Yes. Well, that's what I was trying to
6 get at there, that they had not narrowed their
7 position at that point as the State Department said.

8 Now, on the 10th of November, Ambassador
9 NOMURA called on President Roosevelt, did he not,
10 and at that time read to him a memorandum?

11 A That is correct.

12 Q I note that this memorandum also is not
13 included with your affidavit or referred to therein,
14 from which fact I infer that the Department of State
15 considered it of little importance in the negotia-
16 tions.

17 A Perhaps you will recall that among these
18 intercepted Japanese telegrams which were released
19 at the time of the Pearl Harbor Inquiry there was
20 a telegram of November 5. That telegram will not be
21 in this "Foreign Relations." It will be in this
22 volume that was -- it was the first exhibit in the
23 Pearl Harbor Inquiry. I don't know whether it is in
24 evidence here or not. In that telegram there was an
25 instruction to Ambassador NOMURA in regard to the

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CROSS

1 question of stationing troops in China which shows
2 a complete lack of good faith because he was in-
3 structed to make specious explanations of their
4 reasons for wanting to state, and be vague and
5 indefinite as to what they wanted. In the light of
6 that aspect of the situation, that had to be taken
7 into consideration in connection with any Japanese
8 proposals that were being made to us about that
9 time.

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1 Q Well, if I follow you, then, your answer is
2 "Yes," you didn't consider this of much importance.

3 A You couldn't take any one point at a time;
4 you had to consider the whole situation as a whole.

5 Q My question was why you omitted the Japanese
6 proposal in question from your discussion of the
7 negotiations in your affidavit. I did not suppose
8 there was any reason for your omitting it; that you
9 considered it of little importance. I wonder if that
10 is correct.

11 A We were at that time exploring the whole
12 field.

13 Q Yes, but why was this document not mentioned
14 in your affidavit, Mr. Witness?

15 A That was one of many documents that were
16 not mentioned in my affidavit, because it was one,
17 in my judgment, of lesser importance.

18 Q Yes, so I assume. Now, in connection with
19 the Tripartite Pact, I want to call your attention
20 to the occasion when this document was presented by
21 Ambassador NOMURA to President Roosevelt on the 10th
22 of November. Do you remember that at that time in
23 discussing with the President the matter of the
24 Tripartite Pact the Ambassador said as follows:
25 This is in Foreign Relations, Volume 2, page 716.

BALLANTINE

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1 "The present circumstances under which Japan is
2 placed do not permit my Government to go any further
3 to write in black and white than what is proposed in
4 the draft of September 25th, which I have just quoted.
5 All I have to ask you is to read between the lines
6 and to accept the formula as satisfactory."

7 A Isn't there a line there that the Ambassador
8 erased?

9 Q Yes. That is what I want to ask you about.
10 The last sentence in the publication is lined out and
11 is followed by the notation, "deleted by Ambassador
12 NOMURA." Was any explanation given of why he de-
13 sired it deleted?

14 A I wasn't at that conversation, and if any
15 explanation was made to me I don't recall it.

16 Q Now, continuing on the matter of the Tri-
17 partite Pact for just a moment, was there any feeling
18 in the Department of State by say November that the
19 parties were measureably near to agreement of the
20 Tripartite question alone?

21 A I don't recall that there was any such
22 feeling. As I say, we were trying to look at this
23 question as a whole and getting a little closer,
24 slightly closer on one point without getting any
25 nearer on other points. I don't think that they

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CROSS

1 attached too much importance to any single point
2 because we were so far apart on many of those ques-
3 tions as a whole.

4 MR. KEENAN: Mr. President --

5 THE PRESIDENT: Mr. Chief of Counsel.

6 MR. KEENAN: For the purpose of keeping this
7 cross-examination confined within proper limits with
8 reference to inquiry about the Tripartite, I res-
9 pectfully call the Court and counsel's attention to
10 exhibit 1245-K, which is the note from Japan de-
11 livered to Secretary Hull approximately an hour after
12 Pearl Harbor was attacked on December 7, 1941. On
13 page 4, paragraph 2, of this last official document
14 from the Government of Japan the language is as
15 follows: "The American proposal contained a stipu-
16 lation which states both governments will agree that
17 any agreement which either has concluded with any
18 third power or powers shall be interpreted by it in
19 such a way as a conflict with the fundamental pur-
20 pose of this agreement, the establishment and pre-
21 servation of peace throughout the Pacific area. This
22 version, with the above provision, has been proposed
23 with a view to restrain Japan from fulfilling its
24 obligation under Tripartite Pact when the United
25 States participates in the war in Europe and as

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1 such it would not be accepted by the Japanese Gov-
2 ernment."

3 Mr. President, in the face of that what is
4 the purpose of consuming all of this time in at-
5 tempting to find out from this witness what was
6 the position of Japan with reference to the Tri-
7 partite Pact?

8 THE PRESIDENT: I take it you are objecting
9 to the cross-examination about the Tripartite
10 Pact?

11 MR. KEENAN: Yes.
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1 MR. BLAKENEY: Well, I can state my position
2 very shortly about that. The witness states repeatedly
3 in his affidavit that the Japanese position became
4 extreme, that it became narrowed, or that the State
5 Department considered that to have occurred. Since
6 the witness is the man, as the prosecution assures us,
7 who was the official representative of the United States
8 of America in these negotiations, I think we can
9 cross-examine him to find the factual basis for those
10 statements. He has told us that there were three large
11 points of difference between the two nations. We are
12 examining now about one of them.

13 THE PRESIDENT: Is there anything to be gained
14 by it in view of the very explicit terms of that last
15 document received in evidence? Japan's adherence to
16 that pact is made clear beyond any question. And what
17 does it matter if you establish that during the course
18 of the negotiations the Japanese may not have expressed
19 that view so clearly?

20 MR. BLAKENEY: There is, of course, no question
21 whatever that in the end Japan adhered to the Tripartite
22 Pact. I am not contending that.

23 THE PRESIDENT: Not merely that, but they
24 suggest there they had that adherence throughout. If
25 that be the fact, were they sincere in what they may

BALLANTINE

CROSS

1 have said in the course of the negotiations to modify
2 that?

3 MR. BLAKENEY: Of course, the contention is
4 not made that the Japanese ever, at any given time,
5 were not adherent to the Tripartite Pact. That is not
6 the question. They continued as an adherent to the
7 Pact because no agreement superceding it was ever
8 reached. I am trying to find why it was not reached.

9 THE PRESIDENT: In the fact of that very clear
10 declaration delivered to the Secretary of State on the
11 7th of December, 1941, the cross-examination would
12 appear to be quite unhelpful and the objection is up-
13 held. I cannot say it is irrelevant in view of the
14 affidavit, but it is wholly immaterial.

15 MR. BLAKENEY: Do I understand then that cross-
16 examination on no aspect of negotiations concerning
17 the Tripartite Pact is permitted? That is, I do not
18 understand the scope of the objection and the ruling
19 and I should like direction.

20 THE PRESIDENT: In view of the very explicit
21 statement to which I have just referred, the attitude
22 of the Japanese as to the Tripartite Pact in the course
23 of the negotiations becomes wholly immaterial. I should
24 say the apparent attitude. Immateriality is a ground
25 for excluding evidence.

BALLANTINE

CROSS

1 MR. BLAKENEY: Yes. Of course, I should like
2 to point out that when the time comes that the defense
3 has the opportunity to go into the question of this
4 apparent attitude mentioned by your Honor, the oppor-
5 tunity for cross-examination will be gone.

6 THE PRESIDENT: That does not make the cross-
7 examination material.

8 MR. BLAKENEY: Very well.

9 BY MR. BLAKENEY (Continued):

10 Q Now, let us return to consider the second of
11 the big points of difference between the two nations
12 in these conversations. This was, I believe you said,
13 the question of the settlement of the China Affair
14 within which is included the question of stationing
15 Japanese troops in China. Is it correct to say that, of
16 all, this was the question which most concerned and
17 interested the United States in the problem of this
18 Pacific settlement?

19 A I wouldn't say that, no.

20 Q Well, perhaps we had better simply say this,
21 then, that it was a problem which loomed very large,
22 which was raised on the American side, and which, in
23 the end, proved to be one of the chief stumbling blocks
24 to agreement. That much is correct, is not it?

25 A That is correct.

BALLANTINE

CROSS

1 Q Now, in order to attempt to define clearly
2 the problem involved, I call your attention to the
3 following language on page 14 of your affidavit, para-
4 graph 3, that: "The immutable policy of the Japanese
5 Government to ensure the stability of East Asia was
6 predicated upon establishing at the outset a complete
7 Japanese military and economic stranglehold over China,
8 calling for Japanese control over strategic Chinese
9 industries and facilities, referred to euphemistically
10 in terms such as 'economic cooperation with China,'
11 and retention in large areas of China for an indefinite
12 period of large Japanese garrisons to protect Japan's
13 holdings."

14 THE PRESIDENT: Answer the question tonight,
15 please. Did you finish that question?

16 MR. BLAKENEY: No, sir.

17 THE PRESIDENT: You had better repeat it in
18 the morning.

19 We will adjourn now until half past nine.

20 (Whereupon, at 1600, an adjournment
21 was taken until 0930, Wednesday, 20 November
22 1946, at 0930.)

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